

January 24, 2006

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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REPORT AND DECISION

SUBJECT: Department of Development and Environmental Services File No. **E0401114**

CHRISTIAN RYSER
Code Enforcement Appeal

Location: 25910 – 120th Lane Southwest

Appellant: **Christian Ryser**
25910 – 120th Lane Southwest
Vashon, Washington 98070
Telephone: (206) 463-3080

King County: Department of Development and Environmental Services,
represented by Sheryl Lux
900 Oakesdale Avenue Southwest
Renton, Washington 98055-1219
Telephone: (206) 205-1525
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SUMMARY OF DECISION/RECOMMENDATION:

Department's Preliminary Recommendation:	Deny appeal
Department's Final Recommendation:	Deny appeal
Examiner's Decision:	Grant in part, deny in part

EXAMINER PROCEEDINGS:

Hearing Opened:	January 18, 2006
Hearing Closed:	January 18, 2006

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes.
A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. On October 13, 2005, the King County Department of Development and Environmental Services, Code Enforcement Section, issued a notice and order to Christian Ryser on tax lot 252202-9078 at 25910 – 120th Lane Southwest, Vashon Island. The property was cited for remodel, repair and enlargement of a residence and for construction of a two-story accessory building without required permits and approvals. The notice and order describes the cited structures as lying within environmentally critical areas, specifically aquatic, steep slopes and shoreline conservancy areas. Mr. Ryser has filed a timely appeal of the notice and order. Insofar as relevant to this proceeding, the appeal statement argues that the work done should be exempt from permitting requirements as emergency repair and maintenance that either did not increase the affected structural footprint or otherwise fell below the square footage threshold requiring a permit.
2. The record demonstrates that Mr. Ryser owns three adjacent parcels on Vashon Island bordering Quartermaster Harbor. These are all long, narrow lots, with tax lots 9078 and 9011 to its immediate south being 35 feet wide and the furthest south, tax lot 9072, being 40 feet in width. The main residence on the three conjoined parcels lies on the northernmost tax lot, no. 9078. Since the westerly wall of this structure is at least 32 feet wide and the shed to the south is separated from the main house, it is clear that the shed must be located on parcel 9011 and may perhaps extend onto parcel 9072. Since the scope of the notice and order is limited by its terms to parcel 9078, the citation within the notice and order relating to the shed is legally defective and should be dismissed from the proceeding.
3. With respect to the residence on parcel 9078, a comparison of photographs taken before alterations were implemented and the house in its presently existing condition demonstrate that structural modifications have been made of a nature that require a building permit. The September 2003 photograph depicted in exhibit 8 shows a chimney located at the south end of the residence. The staff photographs taken in late 2004 and 2005 show the second story roof lines extending south of the chimney and attaining a greater elevation. Assuming that the chimney has not been moved or its height decreased, these photos demonstrate that Mr. Ryser has extended the second story of the residence at least ten feet further south and raised the elevation of the western half of the roof some three or four feet. In addition, the locations of doors and windows have been changed. These are all non-exempt structural alterations that require issuance of a building permit.
4. The notice and order cites the Ryser property for structural modifications within environmentally critical areas, namely aquatic and shoreline conservancy areas and steep slopes. Staff has submitted GIS mapping showing the existence of these critical areas features in the neighborhood generally, and the site photographs tell us that water lies east of the house and a sloped area to the west. But the County-generated documents and testimony do not provide specific factual information describing the relationship of these critical areas to the structures on Mr. Ryser's property. Indeed while the notice and order cites the property for an alteration within a steep slope area, the references in the staff report are to erosion and landslide critical areas.

5. The only document in the record that provides any meaningful information on critical areas is Mr. Ryser's site plan (exhibit 9). It shows retaining walls lying west of the house as well as slope toe and top lines, but no elevations are provided. East of the house, Mr. Ryser shows the ordinary high-water mark of Puget Sound to be coterminous with the existing concrete bulkhead and the eastern wall of the residence located some 8 to 14 feet west of the OHWM. This datum clearly suggests that the Ryser residence lies within regulated aquatic and shoreline areas and needs to comply with the applicable critical area regulations. It is not necessary at this point, however, to draw any firm conclusions about the specific applicability of critical areas regulations to the Ryser residence; the necessity for Mr. Ryser to obtain a building permit will trigger critical areas review as a matter of course.

CONCLUSIONS:

1. The accessory shed structure cited within the notice and order appears to be on parcel 9011, not parcel 9078. The citation regarding the shed should therefore be dismissed from the notice and order and the appeal granted with respect to this structure. Nothing within this decision precludes DDES from issuing a later notice and order for tax lot 9011.
2. With respect to the main residential structure on tax lot 9078, the photographic evidence clearly demonstrates that structural changes were made by the Appellant which exceed the level of modification exempted under code from building permit requirements. Therefore, the notice and order must be upheld with respect to its requirement that Mr. Ryser obtain a building permit for the residential alterations on tax lot 9078. Mr. Ryser's site plan shows that the residence lies within regulated shoreline and aquatic areas and must comply with the regulations applicable thereto. The record is inconclusive as to whether the residential alterations are also subject to steep slope or landslide hazard regulations. Notwithstanding the assertion within the DDES staff report, it is highly unlikely that the Appellant will need to comply with erosion hazard regulations in the absence of new clearing and grading.

DECISION:

The appeal is **DENIED** with respect to the notice and order requirement that the residence on tax lot 9078 obtain a building permit, and is **GRANTED** as to the citation regarding the accessory structure on tax lot 9011 which is beyond the scope of the notice and order.

ORDER:

1. No penalties shall be assessed against the Appellant and his property if a complete building permit application for the residential alterations on tax lot 9078 is submitted within 45 days of the date of this order.
2. If the deadline stated above in condition no. 1 is not met, DDES may assess penalties retroactive to the date of this order.

ORDERED this 24th day of January, 2006.

Stafford L. Smith
King County Hearing Examiner

TRANSMITTED this 24th day of January, 2006, via certified mail to the following:

Christian Ryser & Amber Cole
25910 – 120th Lane SW
Vashon, WA 98070

TRANSMITTED this 24th day of January, 2006, to the following parties and interested persons of record:

John E. Ernest
4407 - 51st Ave. NE
Seattle WA 98105

Thomas L. Ernest
7001 Sandpoint Way NE
Seattle WA 98115

Tom Ernest
752 Aloha St.
Seattle WA 98109

Christian Ryser & Amber Cole
25910 - 120th Ln. SW
Vashon WA 98070

Jeri Breazeal
DDES/LUSD
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DDES, Code Enf. Billing
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MS OAK-DE-0100

NOTICE OF RIGHT TO APPEAL

Pursuant to Chapter 20.24, King County Code, the King County Council has directed that the Examiner make the final decision on behalf of the County regarding code enforcement appeals. The Examiner's decision shall be final and conclusive unless proceedings for review of the decision are properly commenced in Superior Court within twenty-one (21) days of issuance of the Examiner's decision. (The Land Use Petition Act defines the date on which a land use decision is issued by the Hearing Examiner as three days after a written decision is mailed.)

MINUTES OF THE JANUARY 18, 2006, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. E0401114.

Stafford L. Smith was the Hearing Examiner in this matter. Participating in the hearing were Sheryl Lux, representing the Department; the Appellant Christian Ryser; and Amber Cole and Tom Ernest.

The following Exhibits were offered and entered into the record:

- Exhibit No. 1 DDES Report to the Hearing Examiner for January 18, 2006
- Exhibit No. 2 Copy of Notice and Order issued October 13, 2005
- Exhibit No. 3 Copy of Notice and Statement of Appeal dated October 27, 2005
- Exhibit No. 4 Copies of codes cited in the Notice and Order
- Exhibit No. 5 Copies of DDES comments on Code Enforcement case no. E0401114
- Exhibit No. 6
 - a Copies of King County Department of Assessment documents for parcel no. 252202-9078
 - b Copies of King County Department of Assessment documents for parcel no. 252202-9072
 - c Copies of King County Department of Assessment documents for parcel no. 252202-9011
 - d Copies from Assessor's records: building photo dated 10/11/1990 and floor plan of same
- Exhibit No. 7 Photographs (5 color copies) taken on 12/15/04 and 5/05/05
- Exhibit No. 8 Photograph (color copy) taken 9/14/03 by Tom Ernest
- Exhibit No. 9 Copies of site plan and house plan submitted by C. Ryser on November 17, 2005
- Exhibit No. 10 Diagram of subject parcels with critical areas overlays and 2002 aerial photograph
- Exhibit No. 11 2002 and 2004 aerial photographs of subject property
- Exhibit No. 12 Letter from Christian Ryser to Sheryl Lux dated January 6, 2006
- Exhibit No. 13 Exterior-only Inspection Residential Appraisal Report dated 11/02/05
- Exhibit No. 14 Substantial development breakdown
- Exhibit No. 15 Revised site and house plans